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HIGH COURT OF CHHATTISGARH

Writ Petition (s) No. 2482 of 2007

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Petitioner: Hemshankar Deshlahra

Versus

Respondents State of Chhattisgarh and another.

Post for order 26-4-2007

Sd/-
S.K. Agnihotri
Judge

(24)

HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (S) No. 2482 of 2007

Petitioner		Hemshankar Deshlahra, age 44 years, S.o. D. Deshlahra, Chief Municipal Officer, Municipal Council, Jamul, Dist. Durg, CG.
	Versus	
Respondents	1)	State of Chhattisgarh, through the Secretary, Urban Administration & Development Department, D.KS. Bhawan, Raipur, CG.
	2)	Municipal Council Jamul, through President.

(WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA)

(SB: Hon'ble Shri Justice Satish K. Agnihotri)

PRESENT:

Shri Ajay Shrivastava, counsel for the petitioner.
Shri Arvind Dubey, Panel Lawyer for respondent No.1/State.

ORDER

(Passed on 26th April, 2007)

By this petition, the petitioner impugns the order dated 15-4-2007 (Annexure P/1) whereunder the petitioner working as Chief Municipal Officer, Municipal council, Jamul, has been transferred to the post of Assistant Director in the office of Deputy Director, Urban Administration & Development Department, Raipur.

2. Learned counsel appearing for the petitioner submits that the transfer order implies the word "deputation" in its order, therefore, the

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impugned order is not a transfer order, but it is a deputation. If it is a deputation, the same cannot be done without consent of the employee as it is well settled law.

3. Per contra, learned counsel appearing for respondent/State submits that the Chief Municipal Officer is a Government servant, therefore, he can be transferred from one Council to another or even to the State Government in Urban Administration & Development Department. The word used as deputation does not indicate that this transfer was on deputation. It is a normal transfer within the same department from one office to another, therefore, no consent of the employee is required. Learned counsel further submits that if an employee/officer is posted at Raipur, in the same office, then he is entitled to some additional city allowance, which cannot be termed as deputation allowance.

4. I have learned counsel appearing for the parties, perused the impugned judgment/order and the documents appended thereto.

5. Learned counsel appearing for the petitioner has not produced any document to support to his contention that the Chief Municipal officer cannot be sent on transfer to the Government, may be even in the same department, except self same statement made by him. Learned counsel has further not pointed out any rules or regulations in order to substantiate his contention as stated above on the basis of the word "deputation" used in the transfer. The petitioner is challenging the impugned order on the ground that the impugned order is not a transfer simplicitor, but it is a deputation order which has been passed without obtaining consent of the petitioner.

6. The service of the petitioner is governed under the provisions of Madhya Pradesh State Municipal Service (Executive) Rules, 1973 (for short, "the Rules 1973). Rule 3 of the Rules 1973 provides for constitution of Municipal Service for the State. It consists of Four Classes, namely, Select Grade, Class I, Class II and Class III. Rule 5 of the Rules 1973 provides for method of recruitment. Rule 12 of the Rules 1973 provides for direct recruitment to the service made by the Public Service Commission through competitive examination.

7. The Second Schedule under sub rule (c) of Rule 5 provides for classification of Grade of Chief Municipal Officers. All the Chief Municipal Officers constitute Madhya Pradesh State Municipal Service along with other officers who are Class I, Class II and Class III officers.

8. Thus, the posting of Municipal Officer from the Municipality to the head office is admittedly not posting on deputation. Thus, the required consent of employee before posting on deputation is not applicable. Since it is a simple transfer itself and the challenge is not on the ground of mala fide, competence of the officer making transfer or violation of rules and regulations, the said order cannot be interfered with by this Court.

9) Be that as it may, it is well settled principle of law that transfer is an incident of service and it is for the employer to decide as to where a particular officer/employee be posted keeping in view public interest as well as administrative exigency. This Court has limited jurisdiction to interfere in the transfer mater and this Court can interfere only in the case of proved mala fide, non-competence of authority passing the

transfer order and transfer order not being in conformity with the rules and regulations.

10) In view of the above, this petition is dismissed. No order as to costs.

Sd/-
S.K. Agnihotri
Judge

Raju